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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,612	09/25/2003	Michael L. Becraft	D-42826-02	6759

28236 7590 08/11/2004

CRYOVAC, INC.
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EXAMINER

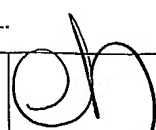
HON, SOW FUN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/670,612	BECRAFT ET AL.	
	Examiner	Art Unit	
	Sow-Fun Hon	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>09/25/03</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al. (US 5,529,833) in view of Sobuttka et al. (US 5,792,808).

Speer et al. has a compound (composition) comprising a blend of an oxygen scavenger (column 3, lines 25-30) which comprises an ethylenically unsaturated hydrocarbon and a transition metal catalyst (column 3, lines 35-40) (component a) ii) of Applicant). The composition can be used as a sealant (column 4, lines 10-15). A sealant is a sealing compound.

Speer et al. teaches that the sealing compound (sealant layer) commonly includes antiblock additives (column 8, lines 40-45), preferably 1 to 15 % by weight of antiblocking agent such as silica (column 8, lines 55-60). Claim 22 recites "the sealing compound comprises a blend of between 95% and 99.5 % oxygen scavenger, and between 0.5% and 5% silica". Hence the claimed sealing compound can contain other components apart from the blend, wherein the claimed amounts of between 95% and 99.5 % oxygen scavenger, and between 0.5% and 5% amorphous silica are only relative to each other in the two-component blend, which is within the realm of routine experimentation.

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Speer et al. teaches that the silica can be Syloid® silica from W. R. Grace & Co. (column 9, lines 1-5). Speer et al. fails to disclose that the Syloid® silica is amorphous and has the claimed mean pore diameter of less than 200 Angstroms, median particle size of less than 20 μm and a surface area of greater than 200 m^2/g .

Sobuttka et al. teaches that commercially available amorphous Syloid® silica, specifically Syloid® AL-1 has an average pore diameter (size) of 2.3 nm (23 Angstroms) which meets the claimed (i) mean pore diameter of less than 200 Angstroms and a specific surface (area) of 700 m^2/g which meets the claimed (iii) surface area of greater than 200 m^2/g (column 3, lines 50-55). The traditional silica (SiO_2) anti-blocking agents are micronized (column 4, lines 15-20) to have an average particle size of 1 to 10 μm (column 4, lines 30-35) which meets the claimed (ii) median particle size of less than 20 μm .

Sobuttka et al. teaches that the amorphous Syloid® silica with high porosity gives better antiblocking effect (column 1, lines 10-25). Antiblocking reduces the tendency of films or sheets to stick when such adhesion is undesirable (column 8, lines 50-55). Processing is a problem when the film sticks to the forming machines (column 8, lines 60-65). Therefore it would have been obvious to one of ordinary skill in the art to have used the high porosity amorphous Syloid® silica of Sobuttka et al. as the antiblock Syloid® silica in the invention of Speer et al. in order to obtain ease of processing.

3. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al. in view of Sobuttka et al. as applied to claims 21-22 above, and further in view of Waring (US 2,131,774).

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Regarding claim 23, Speer et al. teaches that the sealing compound is in the form of a sealant liner (column 12, lines 10-11). A sealant liner is equivalent to a gasket, as evidenced by Waring.

Waring teaches that a sealing liner is equivalent to a gasket for forming an effective sealing joint (column 2a, lines 35-40).

Regarding claim 24, Speer et al. teaches that the sealing compound is used in the form of a sealant liner for a foam tray (column 12, lines 10-15). A foam tray can be either rigid or semi-rigid. Speer et al. teaches an adherent to the foam tray (column 12, lines 30-35), and that blended combinations may be used, recognized by one of ordinary skill in the art (column 12, 45-50). Thus it would have been obvious to one of ordinary skill in the art to have used the sealing liner (gasket) to heat seal, and thus adhere the lid (lidstock) to the rigid or semi-rigid container (foam tray).

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number (571)272-1492. The examiner can normally be reached Monday to Friday from 10:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571)272-1498. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SH

Sow-Fun Hon

06/18/04